These are the tentative rulings for civil law and motion matters set for Tuesday, March 17, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, March 16, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. M-CV-0062882 Federal National Mortgage Ass'n vs. Kosovska, Zoya, et al

This tentative ruling is issued by the Honorable Mark S. Curry. Appearance is required on March 17, 2015 at 8:30 a.m. in Department 32.

2. S-CV-0032447 Westwood Montserrat, Ltd. vs. AGK Sierra de Montserrat

Appearance required on March 17, 2015 at 8:30 a.m. in Department 40.

3. S-CV-0033253 Courtney, Susan M. vs. County of Placer, et al

The Motion to Set Aside Dismissal was continued to April 21, 2015 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

4. S-CV-0033463 House, Stephen Michael, et al vs. Whittle, Joseph, et al

Defendants' Motion for Terminating Sanctions, or in the Alternative, Issue and Evidentiary Sanctions, and Monetary Sanctions, is granted as follows: Terminating sanctions shall be imposed against plaintiff Stephen House (House). Monetary sanctions shall also be imposed against House and his counsel, jointly and severally, in the amount of $2,060. The motion is denied as to plaintiff California Almond Pollination Service, Inc.

If a party fails to obey a court order compelling further answers to discovery, the court may impose additional sanctions, including terminating sanctions dismissing that party's action. Code Civ. Proc. § 2023.030(d). In considering the appropriate sanctions to impose, the court

considers factors including the time that has elapsed since the discovery was served, whether the party received extensions of time to respond, the materiality of the information sought, whether the responding party acted in good faith and with reasonable diligence, and the existence of prior court orders, and the party's compliance therewith. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796.

The order sought by defendants stems from Requests for Production of Documents, Set One, served on House on August 14, 2014, approximately six months prior to this motion being filed. House failed to timely serve responses, thus waiving all objections to the demand. Code Civ. Proc. § 2031.300(a). Defendants filed a motion to compel responses which was set for hearing on November 4, 2014. Plaintiffs did not file any opposition to the motion, which was granted. An order after hearing signed on November 10, 2014 ordered House to "serve verified responses, without objections ... and produce all responsive documents, by December 1, 2014." (Kelly decl., Exh. 7.)

Prior to the hearing on defendants' motion to compel, House served responses to the discovery. However, there were several deficiencies with the responses. For the most part, the responses failed to contain a statement of House's agreement to comply, representations of inability to comply, or objection. Code Civ. Proc. §§ 2031.210(a). To some requests, House stated that he did not have the documents in his possession, dominion or control, but such responses did not state that a diligent search and reasonably inquiry had been made to locate the items demanded, and did not state the name and address of anyone believed to have the documents. Code Civ. Proc. § 2031.230. House provided no responses to two of the requests. Finally, House objected to request No. 32, despite the fact that all objections were waived by House's failure to serve timely responses.

Following receipt of the deficient responses, and the court's order on defendants' motion to compel requiring production by December 1, defendants attempted to meet and confer with plaintiffs, pointing out the deficiencies noted above. The results of the meet and confer efforts were two supplemental responses served on December 8, 2014 and January 3, 2015. These responses were deficient in that they were unverified, continued to fail to comply with Code of Civil Procedure sections 2031.210(a) and 2031.230, and continued to assert objections that had been waived. Despite being advised both by counsel's meet and confer letters, and the court's order on the motion to compel, that objections to the discovery had been waived, plaintiffs' counsel insisted that "nothing revealing Mr. House's or CAPS, Inc. current business contracts will be provided. Mr. House ... will not allow your clients access to confidential CAPS Inc. client information through the discovery process." As of the filing of defendants' motion, the deficiencies had not been cured. Nor did plaintiffs oppose this motion.

There is no apparent justification for House's continuing failure to comply with his obligations under the Code of Civil Procedure. The subject discovery was served seven months ago. House took advantage of multiple extensions of time to respond, while defendants attempted to comply with their own obligations to meet and confer. There is no indication that House acted diligently, or in good faith, throughout this process. While some documents have been produced, the responses themselves are improper, and House adamantly refuses to produce some responsive documents based upon objections that have been waived.

Further, the information sought, and which House refuses to produce, is material to plaintiffs' claims, and defendants' defenses in this action. Plaintiffs allege that certain actions by defendants caused CAPS to become nearly insolvent, unable to raise necessary capital, and to lose several business opportunities. Yet House has refused to produce all documents evidencing CAPS' business transactions since the execution of the Stock Transfer Agreement at issue, or all of the financial books and records of CAPS, which are material to plaintiffs' claims of damages in this action.

While the subject motion is based on House's failure to comply with only one court order, defendants also demonstrate a pattern by House of failing to timely respond to discovery requests, with the court granting a separate, unopposed, motion to compel responses to special interrogatories and requests for production, shortly before this motion was filed. Ultimately, the discovery involved is clearly relevant to issues raised by plaintiffs' complaint and prayer for damages, and the failure and refusal to respond prejudices defendants' ability to prepare for trial. *See Morgan v. Ransom* (1979) 95 Cal.App.3d 664, 669. As the motion is unopposed, House fails to establish a satisfactory excuse for his conduct. *See Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1227. Therefore, terminating sanctions as to House are appropriate.

In addition to any other sanction, an award of reasonable costs and fees incurred as a result of the failure to obey may be awarded. Code Civ. Proc. § 2023.030(a). As House's conduct in failing to respond to discovery and failing to comply with an order of the court necessitated the filing of this motion, the court imposes sanctions in favor of plaintiffs and against House and his counsel, jointly and severally, in the amount of $2,060. *Id.*

The motion is denied as to CAPS as defendants do not assert that CAPS disobeyed any order of the court.

5. S-CV-0033908 Earley, Garret, et al vs. Clover, David, et al

The Expedited Petition to Approve Compromise of Disputed Claim for minor Isabelle Earley is dropped in light of the amended petition filed March 12, 2015.

6. S-CV-0034197 Cline, Judson, et al vs. Lane, Shawn

The Expedited Petition to Approve Compromise of Disputed Claim for minor Cameron Cline is denied without prejudice.

The petitioner must use a "fully complet[ed] *Expedited Petition to Approve Compromise of Disputed Claim...*" Cal. R. Ct., rule 7.950.5(a). The petition fails to attach an original or photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's present condition. (Petition at ¶ 10.) The petition fails to attach statements from the claimant's health plan showing expense payments and requesting reimbursement. (Petition at ¶ 14(d).) The petition fails to attach a copy of the written attorney fee agreement. (Petition at ¶ 15(a).) Finally, "costs" of $1,703.30 are not sufficiently identified.

The court notes that on March 12, 2015, petitioner filed what purports to be an amendment to the petition including the missing exhibits and an itemization of costs as noted above. However, these purported exhibits are not authenticated by any declaration and therefore cannot be considered as credible evidence supporting the petition.

7. S-CV-0034523 Butterfield, Robert v. Jordan, Jeannine

Plaintiff's Motion to Compel Further Response to Request to Produce

Plaintiff Robert Butterfield's Motion to Compel Further Response to Request to Produce is denied.

A motion to compel further responses to a request for production of documents "shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand." Code Civ. Proc. § 2031.310(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98. Declarations containing specific facts showing the requisite good cause are required. *See Fireman's Fund Ins. Co. v. Superior Court* (1991) 233 Cal.App.3d 1138, 1141; *Grannis v. Board of Medical Examiners* (1971) 19 Cal.App.3d 551, 564.

The request at issue seeks "[a]ny toxicology reports reflecting any substance or alcohol testing of you in the twelve (12) months prior to the date of the accident that is subject to this lawsuit." Defendant objected to the request on the grounds of privacy and relevance. The constitutional right to privacy applies to a party's medical records. *John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1198. The right to privacy is protected as to conditions unrelated to the claim or injury sued upon. *See Britt v. Superior Court* (1978) 20 Cal.3d 844, 864.

Plaintiff argues that there is good cause to obtain the requested documents "[t]o determine what documents exist that could lead to evidence about plaintiff's [sic] driving while impaired behavior..." (McDonnell decl., ¶ 6.) Plaintiff states that defendant was convicted of two misdemeanor charges for driving under the influence stemming from a prior accident in July 2013, and argues that the documents requested may be relevant to his claim for punitive damages.

As phrased, the subject request impermissibly intrudes upon defendant's constitutional right to privacy. The request seeks any toxicology reports in the one year period prior to the subject accident. Plaintiff does not demonstrate good cause for the breadth of the request. Plaintiff refers to a prior incident in July 2013, but the request is not limited to this incident.

Plaintiff's request for sanctions is denied.

Plaintiff's Motion to Compel Further Requests for Admission

Plaintiff's Motion to Compel Further Responses to Requests for Admissions is granted.

A response to a request for admission must contain an admission, a denial, a statement claiming the inability to admit or deny, or an objection. Code Civ. Proc. §§ 2033.210(b),

2033.220(b). Plaintiff's request for admission No. 3 requests that defendant admit that she was under the influence of an alcoholic beverage when the accident occurred. Defendant's initial response objected on the grounds that the request called for an expert opinion, but also admitted the request. However, defendant subsequently amended the response. The amended response repeats the objection, then admits that defendant consumed 9 ounces of Merlot at 3:30 a.m. on the date of the incident, and 10 milligrams of Ambien at 7:30 p.m. on the evening before the incident. Defendant's response is not straightforward, and does not comply with the Code of Civil Procedure. Defendant both objects and purports to answer notwithstanding the objection, but the response does not admit the request, or deny the request, or make a statement of inability to admit or deny. It is not clear whether defendant is refusing to respond to the request based on her objection. The response is ambiguous and must be amended to comply with the Code of Civil Procedure.

Plaintiff's request for admission No. 4 requests that defendant admit that she had a blood alcohol content of .08 or higher at the time of the incident. Defendant's initial response admitted the request. However, defendant subsequently amended the response. The amended response objects on the grounds that the request calls for an expert opinion. Defendant goes on to admit that defendant consumed 9 ounces of Merlot at 3:30 a.m. on the date of the incident, and 10 milligrams of Ambien at 7:30 p.m. on the evening before the incident. Again, defendant both objects and purports to answer notwithstanding the objection, but the response does not admit the request, or deny the request, or make a statement of inability to admit or deny. It is not clear whether defendant is refusing to respond to the request based on her objection. Because of the ambiguity of the response, and the failure to comply with the Code of Civil Procedure, the response must be amended.

Plaintiff is awarded sanctions from defendant and her counsel, jointly and severally, in the amount of $560. Code Civ. Proc. § 2033.290(d).

Motion to Quash Deposition Subpoena for Production of Business Records

Defendant's Motion to Quash Deposition Subpoena for Production of Business Records is granted in part.

Defendant moves to quash a subpoena served by plaintiff on Magnussen's Auburn Toyota (Magnussen's) seeking all documents pertaining to any vehicles owned, leased or used by defendant at any time, including by not limited to the 2013 Toyota Corrolla involved in the subject accident, and a 1998 Toyota Avalon. Defendant argues that the subpoena is overbroad, burdensome, seeks irrelevant information, and invades her right to financial privacy.

In opposition, plaintiff argues that the requested documents may confirm whether Magnussen's is the owner of the vehicle involved in the incident, and may show that Magnussen's was aware of "[defendant's] propensity to drive while impaired and furnished her a vehicle anyway..." Plaintiff further argues that other repair records may lead to evidence of other accidents in which defendant was involved, which may lead to evidence that she was driving under the influence when such accidents occurred. Finally, plaintiff asserts that the repair estimates following the subject accident are relevant to the damage claims in this action.

Plaintiff fails to demonstrate good cause for production of documents that are unrelated to ownership of the 2013 Toyota Corrolla, or the subject accident. Plaintiff merely speculates about evidence that could potentially exist, but fails to set forth any facts that would explain how repair records could show that defendant was involved in other accidents while under the influence of alcohol or other substances. The subpoena is not limited by time in any way.

The motion to quash is denied as to documents relating to the identity of the owners of record of the 2013 Toyota Corrolla, and documents relating to repairs of the 2013 Toyota Corrolla performed after September 1, 2013. The motion is otherwise granted.

Defendant's request for sanctions is denied.

Motion to Compel Form Interrogatories

The scheduled motion to compel form interrogatories is dropped as no moving papers were filed with the court.

8. S-CV-0034623 Atherton, David, et al vs. JP Morgan Chase Bank, N.A., et al

The Demurrers to Second Amended Complaint are continued to April 14, 2015 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

9. S-CV-0034809 Dept. of Fair Employment/Housing vs. Awad, Majdi, et al

Defendants' Defendants' Motion to Compel Further Reponses to Requests for Production of Documents and Production was originally set for hearing on March 3, 2015. A tentative ruling was published one day prior to the hearing date, and plaintiff requested oral argument. At oral argument, plaintiff requested that the court consider additional evidence, and the court continued the matter to permit defendants the opportunity to respond. After due consideration of plaintiff's supplemental evidence, as well as defendants' supplemental reply, the court issues the following tentative ruling:

Defendants' request for judicial notice is granted. Defendants' Motion to Compel Further Reponses to Requests for Production of Documents and Production is granted in part.

As narrowed by defendants' reply brief following supplemental responses and production of the privilege log and amended privilege log by plaintiff Department of Fair Employment and Housing (DFEH), defendants demand production of transcripts from interviews which were prepared by a court reporter, and documents identified in the amended privilege log, Item Nos. 2-7, 9-11 and 13-15. Defendants also demand an amended privilege log which offers further facts to support the privileges asserted with respect to Item Nos. 1 and 8.

Defendants' request for an amended privilege log is denied. DFEH sufficiently identifies Item Nos. 1 and 8 as "attorney notes and impressions" authored by staff counsel and associate chief counsel, which are properly subject to attorney work product protection. Code Civ. Proc. § 2018.030.

The court notes that the amended privilege log, filed March 5, 2015, has changed the description of Item No. 3 from "correspondence from Ms. Tompkins" to "notes regarding email from Sandra Tompkins to DFEH staff member". Further, the descriptions of Item Nos. 13 and 14 were amended to specify that the communications related to, or were in response to, attorney-directed interviews of Ms. Tompkins.

Defendants' demand for production of Item Nos. 10, 11, and 15 is granted. These items are identified as communications by and between real party in interest Sandra Tompkins (Tompkins) and DFEH "staff members" or counsel. DFEH contends that these communications are protected by the attorney-client privilege and/or attorney work product protection. DFEH admits that there is no California authority applying the attorney-client privilege to communications between DFEH and real parties in interest such as Ms. Tompkins, but urges the court to apply the reasoning adopted by federal court decisions with respect to the EEOC and HUD, which have found a "de facto" attorney-client relationship in such situations.

The court declines to adopt the reasoning of the federal court decisions cited by DFEH in other contexts. In California, the attorney-client privilege is governed by statute, and the court may not create new privileges as a matter of judicial policy. *OXY Resources Cal. LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 888. The privilege applies only to communications by a person consulting with a lawyer in the lawyer's professional capacity, for the purpose of securing legal service or advice. Evid. Code § 951. In opposition to defendants' motion, Ms. Tompkins submits a declaration stating that she filed a complaint with DFEH because she "wanted DFEH to pursue a claim for illegal discrimination and sexual harassment on my behalf" and that she "always believed that what the DFEH attorneys and I discuss about my case and the information we exchange is confidential". (Tompkins decl., ¶¶ 2, 4.) Ms. Tompkins does not declare that she contacted DFEH for the purpose of securing legal representation or advice, and it is clear that DFEH does not represent Ms. Tompkins in this action, nor has it ever represented her. DFEH's own materials expressly inform the public that its role during investigation of complaints is to act as a "neutral fact-finder" and that it does not represent either the complainant or the respondent. Even if the complaint is forwarded to the legal division of the DFEH for litigation, DFEH makes clear that its attorneys represent "the Department, not the individual Complainant" and that its attorneys are "not the Complainant's personal legal advisor". (RJN, Exh. A.) Further, DFEH provides no basis from which the court could determine that attorney work product protection applies to the subject communications between Ms. Tompkins and the DFEH.

At the initial hearing on this motion, DFEH presented the court with the declaration of Nelson Chan, Associate Chief Counsel for DFEH, and cited 2 California Code of Regulations, Section 10029, in arguing that the attorney-client privilege does apply to the relationship between the DFEH and a complainant like Ms. Tompkins. The cited regulation provides that in order to better allocate resources, the DFEH will identify complaints that are "likely meritorious" and designate such complaints as priority complaint. Further, in its discretion, the legal division of the DFEH may later designate a priority complaint as a "high priority" complaint. Mr. Chan asserts in his declaration that when a complaint is designated as "high priority" by the legal division, "the remaining investigation becomes attorney-directed and in anticipation of potential litigation, as long as that designation remains." (Chan decl., ¶ 4.) Chan does not state when or

even if Ms. Tompkins' complaint in this case was designated as priority or high priority. However, even if the court assumes that at some point, the DFEH legal department designated Ms. Tompkins' complaint as high priority, the regulation does not by its terms create an attorney-client relationship between the complainant and the DFEH.

Defendants' demand for production of Item Nos. 2, 3, 4, 5, 6, 7, 9, 13 and 14 is denied. These items are generally identified as "attorney directed witness interview notes", notes regarding attorney directed communications, and finally, email communications between DFEH and Ms. Tompkins relating to witness interview questions to Ms. Tompkins at the direction of counsel. The California Supreme Court has held that witness statements obtained as a result of an interview conducted by an attorney, or by an attorney's agent at the attorney's behest, are entitled to at least qualified work product protection. *Coito v. Superior Court* (2012) 54 Cal.4th 480, 497. Defendants bear the burden of establishing that denial of disclosure would unfairly prejudice them in preparing their claim or defense, or would result in an injustice. *Id.* at 500. In this case, defendants have not satisfied this burden.

Finally, defendants' demand for production of investigative interview transcripts is granted. Code of Civil Procedure section 2025.570 applies to depositions taken under Civil Discovery Act provisions, and does not apply to the transcripts at issue. DFEH provides no authority to support its refusal to produce copies of the requested transcripts, which it admits are in its possession.

DFEH shall serve produce further documents identified in this ruling by no later than April 3, 2015. The court finds that DFEH opposed the motion with substantial justification and defendants' request for sanctions is denied.

10. S-CV-0035549 Montgomery, Greg, et al vs. Meritage Homes of California

The Demurrer to Complaint was continued to April 14, 2015, at 8:30 a.m. in Department 40.

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